

UNITED STATES DISTRICT COURT

Southern District of New York

HUGH JOHN TULLY and PENELOPE CAROL TULLY,  
on Behalf of Themselves and All Others  
Similarly Situated,

V.

SUMMONS IN A CIVIL ACTION

THE CHARLES SCHWAB CORPORATION,  
SCHWAB INVESTMENTS, CHARLES  
SCHWAB & CO. INC., CHARLES  
SCHWAB INVESTMENT MANAGEMENT,  
INC., CHARLES R. SCHWAB, EVELYN  
DILSAVER, RANDALL W. MERK, and  
GEORGE PEREIRA

08 CV 3652  
CASE NUMBER

JUDGE JONES

TO: (Name and address of Defendant)

THE CHARLES SCHWAB CORPORATION, SCHWAB INVESTMENTS, CHARLES SCHWAB & CO.  
INC., CHARLES SCHWAB INVESTMENT MANAGEMENT, INC., CHARLES R. SCHWAB,  
EVELYN DILSAVER, RANDALL W. MERK, and GEORGE PEREIRA  
101 Montgomery Street,  
San Francisco, CA 94104

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Daniel W. Krasner, Robert B. Weintraub  
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP  
270 Madison Avenue  
New York, New York 10016

an answer to the complaint which is served on you with this summons, within thirty (30) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

APR 16 2008

CLERK

DATE

(By) DEPUTY CLERK

**RETURN OF SERVICE**

Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE <u>4/18/08</u>
NAME OF SERVER (PRINT) <u>Robert B. Weintraub</u>	TITLE <u>Of Counsel, Wolf Haldenstein</u>
Check one box below to indicate appropriate method of service <u>for plaintiffs.</u>	

- ☒ Served personally upon the defendant. Place where served: Pursuant to written agreement with Morrison & Foerster
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
- Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL
		<u>—</u>

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 4/28/08 Date

Robert B. Weintraub Signature of Server

Wolf Haldenstein for plaintiffs

270 Madison Ave NY 10017 Address of Server

(by Stuart C. Plunkett, Esq., Counsel for all defendants other than Schwab Investments, service was effected by e-mail and constituted good service as of April 18, 2008. See attached email from defendants' counsel. Robert B. Weintraub 4/28/08

KOP:WJ 10:10 AM JIM.L

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

**Weintraub, Bob**

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**From:** Plunkett, Stuart C. [SPlunkett@mofo.com]

**Sent:** Sunday, April 20, 2008 5:37 PM

**To:** Weintraub, Bob

**Subject:** RE: SchwabYP, service

Bob,

Thanks for your message. I am authorized to accept service on behalf of The Charles Schwab Corporation, Charles Schwab & Co., Inc., Charles Schwab Investment Management, Inc., Charles R. Schwab, Evelyn Dilsaver, Randall W. Merk, and George Pereira. This confirms that the documents you sent on Friday constituted good service on these defendants as of that date.

Schwab Investments is represented by Randy Bodner and Rob Skinner of Ropes and Gray.

As we briefly discussed on Friday, I would like to agree on a response date. I suggest that we set the response date as June 17, which is 60 days from the date of service. That is the amount of time defendants would be given under Fed. R. Civ. P. 4(d)(3) if we had formally waived service of process rather than accept service. I also think setting a 60-day period makes sense in light of the procedural considerations generated by the pendency of multiple actions pending in three different district courts. Please let me know if that is acceptable to you.

Regards,

Stuart

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**From:** Weintraub, Bob [mailto:weintraub@whafh.com]

**Sent:** April 19, 2008 5:24 PM

**To:** Plunkett, Stuart C.

**Subject:** SchwabYP, service

Stuart,

Before we talked on Friday, you had left a message that you did not have the authority to accept service. Later, when we talked, you said that in the interim you had learned that your firm had received your clients' authority to accept service. You said you were busy on an emergency, but that you would email me, probably on Saturday, that the documents you received from me in the two emails I sent you on Friday constituted good service.

Please email me no later than 11 a.m. New York time Monday a short unambiguous email that the documents I sent you Friday in the two emails constitutes completed service as if each of your clients had been served effective Friday April 18, 2008. Thank you.

Otherwise, since the process server has had the papers since Friday morning San Francisco time, I will tell the process server to effect service. (If you accept service, as a separate courtesy, I will also have the process server deliver a hard copy set of the papers to your office.)

Second, on the identity of the Ropes & Gray attorney representing Schwab Investments, John M. Loder, Esq. is listed as the R&G contact for Schwab Investments on a recent registration statement. Is he the attorney?

4/28/2008

Thank you.  
Bob

Robert B. Weintraub  
Wolf Haldenstein Adler Freeman & Herz LLP  
270 Madison Avenue  
New York, New York 10016  
Tel: 212 545-4689 (direct)  
212 545-4600 (main)  
Fax: 212 545-4653

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<http://www.mofo.com/Circular230.html>

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4/28/2008